

**CALFED Bay-Delta Program
Management Group
Memorandum of Understanding**

The following State and Federal agencies (collectively, the CALFED Agencies) enter into this Memorandum of Understanding (MOU). Other State or Federal agencies may execute the MOU after its effective date. Upon the execution of this MOU by additional agencies, those agencies shall become a party to this MOU and no amendment executed by the other parties is required for the agencies to become a party.

UNITED STATES

Department of the Interior
Department of Agriculture
Bureau of Reclamation
Fish and Wildlife Service
U.S. Geological Survey
Bureau of Land Management
National Marine Fisheries Service
Environmental Protection Agency
Army Corps of Engineers
Natural Resources Conservation Service
Forest Service
Western Area Power Administration

STATE OF CALIFORNIA

Resources Agency
Department of Water Resources
Department of Fish and Game
Department of Food and Agriculture
Environmental Protection Agency
State Water Resources Control Board
Delta Protection Commission
Bay Conservation and Development Commission
State Reclamation Board
Department of Conservation
Department of Health Services

Purpose of MOU

The purpose of this MOU is to formalize the organization and operation of the CALFED Management Group (Management Group) as the ongoing management and coordinating body working under and at the direction of the CALFED Policy Group (Policy Group) to implement the CALFED Bay-Delta Program (CALFED Program) as defined in the August 28, 2000, Record of Decision (ROD) as well as to perform other interagency coordination activities as directed by the Policy Group. This MOU is being adopted pursuant to the provisions of the CALFED Bay-Delta Program Implementation Memorandum of Understanding adopted on August 28, 2000 ("Implementation MOU"). It is anticipated that both this MOU and the Implementation MOU will be revised or replaced when a long term governance structure for the CALFED Bay-Delta Program is established.

A. Recitals

1. On August 28, 2000, the lead CALFED Agencies executed the ROD and certified the Final Programmatic EIS/EIR and Preferred Alternative.
2. On August 28, 2000, the CALFED Agencies executed the Implementation MOU describing a governance structure to be used by the CALFED Agencies in implementing the ROD.
3. The Implementation MOU, at p. 7, allows the Policy Group to establish whatever work groups and subcommittees are necessary to carry out its responsibilities.
4. The CALFED Agencies have concluded that the Management Group should be formally constituted as a work group by the Policy Group, with duties and procedures as specified in this MOU.
5. The CALFED Agencies endorsed a set of Management Group procedures at a meeting on July 31, 2001 ("Management Group Procedures"). Those Management Group Procedures will continue to apply until changed by the affirmative action of the Management Group. A copy of these Procedures, as endorsed, are attached as Attachment 1.

B. Definitions

Except as otherwise explicitly stated herein, terms used in this MOU shall have the same definitions as in the Implementation MOU.

California Bay-Delta Public Advisory Committee (BDPAC): the Federal Advisory Committee Act committee chartered by the Secretary of the Interior on July 2, 2001, or any formally chartered successor thereto.

Director: the Director of the CALFED Bay Delta Program.

C. Membership

1. Each CALFED Agency executing the Implementation MOU shall be a member of the Management Group.
2. Each CALFED Agency shall name a representative and an alternate for participation in Management Group meetings. In the absence of both the designated representative and the alternate for an Agency, an Agency may name a substitute representative for a meeting by notifying the State or Federal Coordinator.

3. State and Federal Coordinators. The State CALFED Agencies shall designate a State Coordinator for the Management Group. The Federal CALFED Agencies shall designate a Federal Coordinator for the Management Group. If unable to attend a meeting, the State or Federal Coordinator, as the case may be, will name a substitute by notifying the Director.
4. New Members. State or Federal agencies that execute both the Implementation MOU and this MOU become members of the Management Group.

D. Duties of Management Group

1. The Management Group is responsible for developing any proposals and recommendations for the Policy Group necessary for the Policy Group's completion of its obligations under Section D and Attachment A of the Implementation MOU.
2. No delegation. Final decision making or recommendation authority for actions explicitly requiring action by the Policy Group under the Implementation MOU is retained by the Policy Group unless and to the extent that such authority is delegated in writing by the Policy Group to the Management Group.
3. The following tasks assigned to the Policy Group in the Implementation MOU are delegated to the Management Group:
 - a. The Management Group will be responsible for reviewing proposal solicitation packages (PSPs) and directed actions as outlined in Section G, below, and at the end of each PSP process and/or directed action process will recommend projects for funding to the applicable responsible funding agency. Before finalizing any recommendations, the Management Group will consider whether there has been appropriate public outreach for the funding program in question. In evaluating appropriate public outreach, the Management Group will consider the ongoing public outreach efforts in the various project solicitation processes, as well as the applicable requirements of State and Federal law.
 - b. As described in Section H, below, the Management Group will be responsible for developing appropriate management procedures, which will be reviewed by the Policy Group, to assure that the CALFED Bay Delta Program is implemented consistent with the ROD.
 - c. The Management Group will be responsible for providing time-sensitive recommendations as needed by Program managers to make decisions to implement individual programs or projects. The Management Group will make these recommendations in a manner consistent with the CALFED Program goals and objectives set forth by the Policy Group to maintain consistency with the ROD and overall Program balance.
 - d. Not less than quarterly, the Management Group will submit a report to the Policy Group and the BDPAC summarizing its actions during the previous quarter.

E. Management Group Meetings

1. The Management Group will meet as necessary to complete its business, as determined jointly by the Director and the State and Federal Management Group Coordinators.
2. In order to transact business, meetings of the Management Group must have, at a minimum, attendance by the Director or his or her designated representative and the State and Federal Coordinators or their designated alternates.

Exception: The quorum requirements imposed on Policy Group meetings in Section D.1 of the Implementation MOU shall apply to final decisions made by the Management Group under an explicit written delegation from the Policy Group, unless the delegation specifies a different quorum requirement.

3. Written summaries of actions taken at Management Group meetings will be provided to Management Group members as described in the procedures endorsed at the July 31, 2001 meeting, a copy of which is attached.
4. The Director and the State and Federal Coordinators will develop an agenda for each meeting. The meetings will be chaired by the State and Federal Coordinators, alternating each meeting.
5. Each Management Group member will receive advance notification of Management Group in writing or by electronic mail. The notice will be sent to the designated representative and alternate of each Management Group member.

F. General Decision Making Protocols

1. Goals. Where possible, the Management Group should make its decisions based on the consensus of the Group. In addition, the Management Group should assure that disputes are identified and resolved at the earliest time and at the lowest practicable level, consistent with maintaining accountability.
2. Issues can be raised to the Management Group by any of the following: the Director, the State and/or Federal Management Group Coordinators, any CALFED Agency, or the CALFED Program Managers.
 - a. General categories of items that should be brought to Management Group include those listed below.
 - i. Policy recommendations for the Program;
 - ii. Actions or recommendations likely to be precedent-setting or controversial;

- iii. Decisions related to funding or significant changes to the timeline of any program element;
 - iv. Review of major CALFED work products;
 - v. Recommendations related to program balancing and the CALFED annual report; and
 - vi. Issues that require development of proposals or recommendations before being brought to CALFED Policy Group.
- b. Individuals elevating issues to the Management Group must provide the State and Federal Coordinators and the Director with a statement describing the interested agencies, interested stakeholders, and relevant stakeholder outreach groups involved in the issue, and must include a description of the efforts taken to date to resolve the issue with those agencies and stakeholders. The purpose of this requirement is to assure that interested agencies and stakeholders are identified and involved before elevation to the Management Group.
- 3. Once an issue is raised to the Management Group, the Management Group may take any appropriate action, including, but not limited to:
 - a. Return the matter to the referrer for further development
 - b. Referring the matter to another forum
 - c. Assigning the issue to an ad hoc working group established by the Management Group
 - d. Making decisions/recommendations to the Policy Group
 - e. Elevating the issue to the Policy Group
- 4. Decision Making. The Management Group will strive to make its decisions by consensus. For this purpose, consensus is defined as the agreement or acceptance by all members in attendance at a meeting and not formally abstaining. Management Group members attending meetings may formally abstain from particular decisions by notifying the meeting chair. In the absence of such consensus, the Coordinators shall, after conferring with their respective caucuses (State and Federal), collectively determine the appropriate course for reaching agreement. If Coordinators reach an agreement acceptable to both caucuses, they will provide a written summary of the resolution of the issue to the Management Group for ratification. If the Coordinators are unable to reach an agreement, they shall refer the issue to the Policy Group.

G. Oversight of Category A Program Proposal Solicitation Packages (PSPs) and Directed Actions

1. The signatories envision that a substantial part of the implementation of the CALFED Bay Delta Program will be carried out by the component programs through the use of proposal solicitation packages (PSPs). To maintain effective oversight of the PSP processes, the Management Group will require regular reporting and will recommend approval of program PSP activities to the funding agency. Individual programs will provide Management Group with annual workplans which will outline the reporting process necessary to receive recommended Management Group approval. Management Group will approve the reporting process.
2. In implementing the CALFED Program, there may be exceptions to the approach of using open competition via PSPs. In some instances, it may be preferable to direct funds to a particular entity or for an agency to carry out a project directly. There may also be times when a targeted solicitation is issued to a limited number of potential recipients. In these cases, Management Group will provide an analogous level of oversight as described in G.1. Specifically, Management Group intends to review and approve:
 - proposed recommendations to undertake a directed action;
 - recommendations of review panel; and
 - proposed final recommendations, prior to taking those recommendations to the funding agency.

H. Oversight of other Program activities

1. Category A and Category B programs

- a. The Implementation MOU includes a discussion of CALFED Agency commitments as to Category A and Category B programs, and provided an initial list of Category A and Category B programs. As stated in the Implementation MOU, Agency commitments are as follows:

“● **Category A - Consistent Programs and Funding:** Includes those programs and funds that should be managed and implemented consistent with the CALFED objectives. Category A includes both long-term existing programs that should be managed consistent with CALFED objectives, and more recent funding and programs specifically targeted at CALFED objectives and actions.

“● **Category B - Related Programs and Funding:** Includes those programs and funds that have related and overlapping programs objectives and whose geographic area of focus overlaps with the CALFED solution area.

“Category A Procedures: For Category A programs and funds:

- “a. CALFED Agencies responsible for Program management and/or implementation agree to coordinate with Program Staff and other CALFED Agencies to develop program priorities, workplans, proposed budgets, and significant program products (such as regulations, grant or loan solicitations, environmental documentation, projects selection).
- “b. When the Program Staff is assigned responsibility for Program Management it shall coordinate with appropriate agencies to develop program priorities, workplans, proposed budgets, and significant program products (such as regulations, grant or loan solicitations, environmental documentation and project selection).
- “c. CALFED Agencies or the Program Staff, as appropriate, shall then submit Program priorities, workplans, budgets and significant program products to the Policy Group for review, recommended approval, and statement of consistency with the CALFED Program objectives.
- “d. Final approvals will remain with those Agencies with the program and funding authority.”

“Category B Procedures: CALFED Agencies with authority for Category B programs and funding agree to:

- “– Work with appropriate CALFED Agencies and the Program Staff in the development of Category B programs and projects
- “– Share annual plan for programs and projects located in the CALFED solution area to the Policy Group to identify opportunities for coordinating resources and funding to increase efficiency, and to avoid duplication.”

2. Revising List of Category A and Category B. At the request of any CALFED Agency, the Director, or the State or Federal Coordinators, the Management Group shall consider whether CALFED Agency programs should be added to the list of Category A and Category B programs, deleted from the list of Category A and Category B programs, or changed in status from Category A to Category B or vice versa. Classification or reclassification of CALFED Agency programs under this paragraph requires the agreement of the Agency with funding authority. Management Group recommendations for classification or reclassification will be given to the Policy Group for final action.

b. Implementation, coordination and review of Category A programs

For Category A programs, the Implementation MOU sets forth procedures by which Policy Group determines whether the agencies are implementing the programs consistently with CALFED program objectives. (See Section D4 of the Implementation MOU.) To streamline and clarify the process, those procedures are modified and restated as follows:

- (A) CALFED agencies, in consultation with Program Managers and affected agencies, will identify the provisions of the ROD relevant to their Category A programs, including mitigation measures, and will integrate those provisions into their Category A programs, to the degree feasible and permitted by law. Agency management and staff have the primary responsibility for implementing the programs consistently with the ROD.
- (B) Annually, Program Managers, in coordination with CALFED agencies with relevant Category A programs, will report their annual program priorities, work plans, proposed budgets and significant program products to Management Group. The Program Manager reports, along with recommendations from Management Group, will be submitted to Policy Group, which will review the priorities to determine consistency with program objectives.
- (C) Policy Group may request and review additional information about Category A programs as it deems appropriate.
- (D) In consultation with Management Group, CALFED agencies and Program Managers will adopt management procedures - including periodic review and reporting requirements - to ensure that the agencies implement Category A programs consistently with the ROD and Policy Group's recommendation, to the degree authorized by law. Programs will require a varying degree of oversight, depending on their complexity, the risks associated with the program, and the resources available for oversight.
- (E) Disputes over the implementation of Category A programs may be discussed, to reach a recommended solution, at Management Group and, if necessary, Policy Group, under the procedures set forth in section F, above. Final decisions will remain with the agency with program and funding authority.

I. Relationship to Public Advisory processes

The California Bay-Delta Public Advisory Committee (BDPAC) is the primary forum for providing public comment to the Policy Group on the implementation of the Program. Nothing in this MOU is intended to change that role. However, the Management Group will consider advice from BDPAC on issues within the responsibilities of BDPAC as outlined in the BDPAC charter for tasks which are delegated to Management Group in this MOU. Management Group will report to Policy Group on how input and recommendations from BDPAC were incorporated into Management Group recommendations or decisions.

Exception: Final recommendations made by Management Group under an explicit written delegation from the Policy Group. In these cases, State and Federal Coordinators shall and other Management Group members will be encouraged to attend BDPAC meetings and/or appropriate BDPAC subcommittee meetings when issues concerning the final recommendations are discussed. Management Group will report to BDPAC how advice and recommendations were incorporated into the final recommendations.

J. Contingent on Appropriation of Funds and Future Actions

The expenditure or advance of any money or the performance of any obligation of the United States under this MOU shall be contingent upon appropriation or allotment of funds in accordance with 31 USC 1341 (Anti-Deficiency Act). No liability shall accrue to the United States or the State of California for failure to perform any obligation under this MOU in the event that funds are not appropriated or allotted. Consistent with Federal law, nothing in this document or the ROD constrains the discretion of the President or his successors to make whatever budgetary or legislative proposals he or his successors deem appropriate or desirable. The commitments and obligations under this MOU of the State of California are subject to the availability of appropriated funds. No liability shall accrue to the State of California for failure to perform any obligation under this MOU in the event that funds are not appropriated.

K. Legal Consistency

All provisions of this MOU are intended and shall be interpreted to be consistent with all applicable provisions of State and Federal law.

L. No Effect on Agency Authority

No State or Federal CALFED agency has delegated its authority or discretion to any other agency or to the CALFED agencies collectively. The CALFED Program, its staff, and its and organizational units - including Policy Group and Management Group - cannot require an agency to take any particular action. The CALFED Program resolves disputes between agencies, and it facilitates coordination and planning among the agencies. The agencies retain their discretion to make final decisions to implement elements of the long term plan, according to their legal authority.

The signatories recognize that public agencies to this MOU have specific statutory and regulatory authority and responsibilities, and that actions of these public entities must be consistent with applicable procedural and substantive requirements. Nothing in this MOU is intended to, or shall have the effect of, constraining or limiting any public entity in carrying out its statutory responsibilities. Nothing in this MOU constitutes an admission by any party as to the proper interpretation of any provision of law, nor is anything in this MOU intended to, nor shall it have the effect of, waiving or limiting any public entity's rights and remedies under any applicable law.

The signatories recognize that certain departments, boards, and commissions (Adjudicative Entities) have adjudicative responsibilities with respect to contested regulatory matters that are brought before them. (See California Gov. Code §§ 11400, et seq.) Such adjudicative responsibilities include the requirement that the Adjudicative Entity and its members avoid bias, prejudice, or interest in the adjudicative matters before them, e.g., they cannot decide the outcome of a matter before completion of any required hearing or equivalent proceeding. Some such Adjudicative Entities exist within the undersigned agencies. This MOU does not in any way require or commit an Adjudicative Entity to participate in proposing a project that will come before it for approval, nor does this MOU require or imply that an Adjudicative Entity will approve a project that requires an adjudicative proceeding. Under this MOU, the role of Adjudicative Entities in connection with matters that may require an adjudicative decision is limited to promptly and diligently processing any applications, petitions, or other requests for approval. Nothing in this MOU commits an Adjudicative Entity to an approval or disapproval of any project subject to the authority of the Adjudicative Entity, nor to a term or condition in any approval of a project by the Adjudicative Entity.

M. No waiver of sovereignty

The State agencies' participation in this MOU and the CALFED Program does not subject the State to Federal law or waive its immunity to suit under the Federal Constitution. The Federal agencies' participation in this MOU and the CALFED Program does not subject the Federal government to State law or waive its immunity to suit under the Federal constitution.

N. Modification

This MOU can be modified if agreed to in writing by all parties hereto.

O. Relationship to Water Operations Management Team (WOMT)

The Implementation MOU recognizes that the Water Operations Management Team (WOMT) was established to coordinate and resolve operations issues. Nothing in this MOU is intended to change the functions of the WOMT. The Management Group may ask WOMT agencies for ongoing status reports on operational issues being addressed in WOMT, and may make Management Group recommendations to the Policy Group on issues that still require resolution.

P. Term of the MOU

This MOU shall expire on September 30, 2003 unless terminated or extended by written agreement of all parties hereto.

Q. Antidiscrimination Provisions

The program or activities conducted by or funded by any Federal agency under this agreement will be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and American's With Disabilities Act of 1990. They will also be in accordance with applicable Federal regulations, which provide that no person in the United States shall on the grounds of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.

R. Signature in Counterparts

This MOU may be executed in counterparts.

Having considered the contents of this document, its attachments and the documents supporting this decision, we hereby adopt this Memorandum of Understanding. By signing this document together, we exercise our respective authorities over only those portions relevant to our authority.

Signed and dated:

United States of America

Bennett W. Raley
Assistant Secretary for Water and Science
U.S. Department of the Interior

Date

Kirk Rodgers, Acting Regional Director
Mid-Pacific Region
U.S. Bureau of Reclamation

Date

Michael Pool, State Director
U.S. Bureau of Land Management

Date

Steve Thompson, Manager
California-Nevada Operations
U.S. Fish and Wildlife Service

Date

Rodney R. McInnis
Acting Regional Administrator
National Marine Fisheries Service

Date

Willam T. Sexton
Regional Executive for Water
U.S. Geological Survey

Date

Brigadier General Robert L. Davis
Commander and Division Engineer
South Pacific Division
U.S. Army Corps of Engineers

Date

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency

Date

Charles W. Bell, State Conservationist
Natural Resources Conservation Service

Date

Jack A. Blackwell, Regional Forester
Pacific Southwest Region
U.S. Forest Service

Date

James D. Keselburg, Regional Manager
Sierra Nevada Region
Western Area Power Administration

Date

State of California

Mary D. Nichols, Secretary
California Resources Agency

Date

Thomas M. Hannigan, Director
California Department of Water Resources

Date

Robert C. Hight, Director
California Department of Fish and Game

Date

Darryl W. Young, Director
California Department of Conservation

Date

Margit Aramburu, Executive Director
Delta Protection Commission

Date

Will Travis, Executive Director
San Francisco Bay Conservation
and Development Commission

Date

Peter D. Rabbon, General Manager
The Reclamation Board

Date

Winston H. Hickox, Secretary
California Environmental Protection Agency

Date

Celeste Cantu, Executive Director
California State Water Resources Control Board

Date

William J. Lyons, Director
California Department of Food and Agriculture

Date

Diana Bontá, Director
California Department of Health Services

Date

Attachment

SUBJECT: Proposals for Enhancing CALFED Management Group

TO: CALFED Management Group

FROM: CALFED Reinvention Team

DATE: July 26, 2001

BACKGROUND

At the July 10, 2001, CALFED Management Group meeting, CALFED staff provided a number of recommendations for improving the Management Group meeting process. At that meeting, a smaller temporary workgroup (the "CALFED Reinvention Team") was established to consider these proposals and to begin a broader evaluation of the way we get our work done through the CALFED Management Group and other management processes.

This memorandum summarizes our proposals for the narrow question of how we run our CALFED Management Group meetings in the near future. For this purpose, we've divided the Staff Proposal into five discrete proposals.

PROPOSALS AND EVALUATION

- (1) **Staff Proposal:** CALFED Management Group should meet twice monthly (2nd and 4th Tuesdays) at 10 am -Noon, and be preceded by separate State and Federal meetings at 9 am.

CRT Recommendations: Agree, although the meeting length will ultimately be determined by the workload. We are already being rushed in our current format.

- (2) **Staff Proposal:** To improve our ability to track issues, we should (a) provide email summaries of all action items; (b) provide email list of tasks assigned during meetings; and (c) maintain a catalog of final handouts distributed in meetings.

CRT Recommendations:

- (A) Return to practice of providing email Meeting Summaries. The level of detail should be roughly the same as in the previous "Mary Selkirk Summaries," and should include summaries of actions taken, tasks assigned, issues discussed that did not include "actions," and list of final handouts. These summaries need to go by email out reasonably soon after a meeting, and there needs to be a feedback/correction loop to assure that we agree on what we did.
- (B) If we stay on the 2 week meeting cycle, we should have the draft agendas and meeting materials distributed one week before a meeting. This will

enable agencies to work through issues in their own management chains. Materials for the action items, especially, need this early distribution, and should include a clear written statement of what we are being asked to act upon.

- (C) Maintaining a master catalog of final handouts is a good idea, and would probably make the lawyers happy (although the CRT could not agree as to whether making lawyers happy is a CALFED goal).

- (3) **Staff Proposal:** Maintain and distribute a master calendar of major upcoming items (such as budget action dates, annual work plan due dates, regional presentations, annual reports of various programs, etc.

CRT Recommendations: We agree.

- (4) **Staff Proposal:** Standard Items - Each Management Group meeting should include a list of standard items (for example, ROD items, consistency determinations, information items).

CRT Recommendations: We agree. However, we don't see this as a major problem, and believe that the process for getting things on the agenda generally works well. We don't think "consistency determinations" is a good example, since we don't yet have much agreement on how such determinations will be made by the Policy Group. Also, we believe that "legislative and budget updates" need to be included as standard items.

- (5) **Staff Proposal:** None.

CRT Recommendation: Education presentations. There is a sense of the CRT that we should be providing some kind of "current science" to the Management Group. These presentations would need to be short, occasional and relevant to real-time issues, but are not intended to be "crises management" science. Put another way: We're spending a lot of money on answering scientific questions in the Delta; these presentations should be a mechanism for disseminating any relevant results to decisionmakers. We recommend asking the Science Program to decide which issues are appropriate.

At our Management Group meeting on July 31, 2001, we will ask the attendees to review and approve, or, if necessary, revise and then approve, these recommendations, which would then become effective immediately.